INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Argument	4
Conclusion	7
Appendix	8

CITATIONS

Cases:	
Neild v. *District of Columbia*, 110 F. 2d 246	4
O'Donoghue v. *United States*, 289 U. S. 516	4
Parsons v. *District of Columbia*, 170 U. S. 45	4
Shoemaker v. *United States*, 147 U. S. 282	4
United States v. *Certain Lands in the City of Louisville*, 78 F. 2d 684, certiorari granted 296 U. S. 567, dismissed on motion of the petitioner 297 U. S. 726	4
Statutes:	
U. S. Const., Art. I, sec. 8, cl. 17	4
Act of March 1, 1929, c. 416, 45 Stat. 1415, 40 U. S. C., sec. 361	18
Act of June 12, 1934, c. 465, 48 Stat. 930, as amended by the Act of June 25, 1938, c. 691, 52 Stat. 1186	8
United States Housing Act of September 1, 1937, c. 896, 50 Stat. 888, 42 U. S. C., Supp. V, sec. 1401	12

200752—41——1

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 152

MINNIE KEYES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The district court did not deliver an opinion. The opinion of the Court of Appeals (R. 52–59) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals sought to be reviewed was entered on March 10, 1941 (R. 59). The petition for a writ of certiorari was filed on June 10, 1941. The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the United States may condemn petitioner's property for the purpose of constructing a low-rent housing project in the District of Columbia.

STATUTES INVOLVED

The pertinent provisions of the Act of June 12, 1934, c. 465, 48 Stat. 930, as amended by the Act of June 25, 1938, c. 691, 52 Stat. 1186; the United States Housing Act of September 1, 1937, c. 896, 50 Stat. 888, 42 U. S. C., Supp. V, sec. 1401; and the Act of March 1, 1929, c. 416, 45 Stat. 1415, 40 U. S. C., sec. 361, are set out in the Appendix.

STATEMENT

This condemnation proceeding was instituted by the United States, upon the request of the Alley Dwelling Authority of the District of Columbia, for the purpose of acquiring petitioner's property for a low-rent housing project in the District of Columbia (R. 1–19).

Title I of the Act of June 12, 1934, c. 465, 48 Stat. 930, provides that the District of Columbia Alley Dwelling Authority may demolish alley dwellings and replace them with suitable low-cost dwellings.

Title II of that Act, as amended by the Act of June 25, 1938, c. 691, 52 Stat. 1186–1189, provides (sec. 203) that the Authority "shall be considered a public housing agency within the meaning of,

and to carry out the purposes of, the United States Housing Act of 1937." The Authority is authorized (sec. 203) to accept loans, contributions and grants from the United States Housing Authority. It is also empowered (sec. 202) "to acquire sites for" and to construct low-rent housing projects in the District of Columbia. This power is "In addition to" (sec. 202) the Authority's powers under Title I.

The Act of March 1, 1929, c. 416, 45 Stat. 1415, 40 U. S. C. sec. 361, provides that whenever a Government officer or agency "shall be, authorized by law to acquire real property in the District of Columbia * * *, such acquiring authority shall be, and hereby is, authorized to acquire the same * * * by condemnation."

The Government's petition recites (R. 2–4, 7) that the proceeding is brought pursuant to the above mentioned statutes and alleges (R. 5–6) that the United States Housing Authority has agreed to lend the necessary funds to the District of Columbia Authority.

Petitioner filed an answer which assumed that the proceeding was brought, not under Title II of the 1934 Act, as amended, but instead under Title I of that Act (R. 35–36, 37–38). She attacked the declarations of Congressional policy and legislative findings contained in section 1 of Title I (R. 38–39). She also alleged facts designed to show that her property was not of the character author-

ized to be acquired under Title I (R. 39–40). Her final defense was that the Federal Government could not constitutionally take her property by eminent domain for the purpose of constructing a low-rent housing project (R. 40).

The district court upheld the Government's right to condemn (R. 43–44) and the court of appeals affirmed (R. 59).

ARGUMENT

1. The Court of Appeals held (R. 58–59) that the United States has constitutional power to condemn petitioner's property, which is located in the District of Columbia, for the purpose of constructing a low-rent housing project. This holding is plainly correct. In legislating for the District of Columbia Congress enjoys the same powers as do the legislatures within the states [1] and it is settle that a state legislature may validly provide for low-rent housing projects and authorize the condemnation of land for that purpose.[2] To support her contention (Pet. 16–19) that the Federal Government cannot take her property by eminent domain petitioner relies solely on *United States* v. *Certain Lands in the City of Louisville*, 78 F. 2d 684

[1] U. S. Const., Art. I, sec. 8, cl. 17; *Shoemaker* v. *United States*, 147 U. S. 282, 298; *Parsons* v. *District of Columbia*, 170 U. S. 45, 52; *O'Donoghue* v. *United States*, 289 U. S. 516, 539; *Neild* v. *District of Columbia*, 110 F. 2d 246, 249–251 (App. D. C.)

[2] The authorities, from 16 States, are collected in the opinion of the court of appeals (R. 58–59).

(C. C. A. 6) certiorari granted, 296 U. S. 567, dismissed on motion of the petitioner, 297 U. S. 726. Whatever the merits of that decision, it has, as the court below pointed out (R. 58), no application here. It involved proceedings brought by the United States to condemn land for housing purposes in a state, and presented a question only as to the scope of the federal powers granted by the welfare clause.

2. Petitioner also urges (Pet. 8–15) that there is no statute authorizing the condemnation of her property. As the record discloses (R. 2–4, 22–24), this proceeding is brought pursuant to Title II of the Act of June 12, 1934, c. 465, 48 Stat. 930, as amended by the Act of June 25, 1938, c. 691, 52 Stat. 1186 (pp. 10–11, *infra*). It is clear that the condemnation of petitioner's property is authorized by Title II and by the Act of March 1, 1929, c. 416, 45 Stat. 1415, 40 U. S. C. sec. 361. Section 202 of Title II (pp. 10–11, *infra*) empowers the District of Columbia Authority to "acquire sites for" the construction of low-rent housing projects. The 1929 Act (p. 18, *infra*) provides that whenever a government officer or agency "shall be authorized by law to acquire real property in the District of Columbia * * *, such acquiring authority shall be, and hereby is, authorized to acquire the same * * * by condemnation."

Since this proceeding is brought under Title II, it is not necessary to consider petitioner's con-

tention (Pet. 8–9) that it is not authorized by Title I (pp. 8–10, *infra*) of the Act of June 12, 1934, as amended by the Act of June 25, 1938. It is likewise unnecessary to deal with the argument (Pet. 12–13) that petitioner has been denied an opportunity to attack the legislative findings and declaration of Congressional policy set forth in section 1 of Title I. Those findings, as the court below held (R. 57) are not pertinent to a proceeding under Title II.

There is no merit in petitioner's contention (Pet. 9–12) that the power conferred by Title II and by the Act of March 1, 1929 is limited by the United States Housing Act of September 1, 1937, c. 896, 50 Stat. 888, 42 U. S. C., Supp. V, sec. 1401 (pp. 12–17, *infra*). That Act merely provides that the United States Housing Authority may make loans (sec. 9), annual contributions (sec. 10), and capital grants (sec. 11) to public housing agencies. While annual contributions and capital grants can only be made for projects which contemplate the elimination of unsafe and insanitary dwellings (secs. 10, 11), there is, under section 9, no such restriction on the power of the United States Housing Authority to make loans. Since the record shows (R. 5–6) and petitioner admits (Pet. 10) that this project is to be financed by a loan, and not by annual contributions or a capital grant, the argument (Pet. 11) that her property is neither unsafe nor insanitary is irrelevant.

3. Petitioner's final contention (Pet. 15–16) is that her answer raises material issues of fact on which she was denied the right to offer evidence. Apart from allegations of want of regularity (R. 36) contradicted by the face of the petition, the only issues of fact raised by the answer related to the health and safety of alley dwellings (R. 38–39) and of petitioner's property (R. 39–40), and are irrelevant to proceedings under Title II. In any event, as the court below also noted, this "argument is general and refers to no particular issue" (R. 57).

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari presents no question of substance and should be denied.

CHARLES FAHY,
Acting Solicitor General.
NORMAN M. LITTELL,
Assistant Attorney General.
WARNER W. GARDNER,
Special Assistant to the Attorney General.
CHARLES R. DENNY,
Attorney.

JULY 1941.

200752—41——2